

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MICHAEL LYNN STEWART, #1084888,

Petitioner,

v.

ACTION NO. 2:16cv33

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Petitioner alleges violations of federal rights pertaining to his convictions on July 29, 2004, in the Circuit Court for Arlington County for breaking and entering, two counts of robbery, three counts of attempted robbery, rape, and five counts of use of a firearm in the commission of a felony.


The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's report and recommendation recommends that respondent's motion to dismiss be granted, and the petition for a writ of habeas corpus be denied. The Court has received no objections to the report and recommendation and the time for filing objections has expired.

The Court does hereby accept the findings and recommendations set forth in the report and recommendation filed October 17, 2016, and it is therefore **ORDERED** that respondent's motion to dismiss, ECF No. 8, be **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, be **DENIED**. It is further ORDERED that judgment be entered in favor of respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.



Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
December 9, 2016